IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-07-2007

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. Nos. 6889, 27402, 36954, 37189, 42934, 48687 of 2006

WP No. 6889 of 2006

Ambikapathi @ Vinayagam .. Petitioner

Versus

1. Union Territory of Pondicherry
rep. By its Chief Secretary
Pondicherry

2. The Secretary
Department of Revenue and Disaster
Management
Pondicherry

3. The Additional Secretary (Revenue)
Land Acquisition Officer
Department of Revenue and Disaster
Management
Pondicherry .. Respondents

WP No. 6889 of 2006: Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records relating 4 (1) notification to G.O.Mis.No.15 dated 20.02.2006 and the Section 6 Declaration in G.O.Misc No.23 dated 28.02.2006 of Revenue and Disaster Management Department, Union Territory of Pondicherry and quash the same.

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WP.No.27402/2006:

1. A.Purushothaman
2. A.Muthukrishnan ..Petitioner.

-Vs-

1. Union of India, rep. By
The Addl. Secretary [Revenue]
Government of Pondicherry,
Pondicherry

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2. The Deputy Collector[Revenue]
North cum Land Acquisition Officer,
Revenue Department,
Pondicherry. ..Respondents.

Petition filed under under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to proceedings No.632/DCR/N/LA/U/2005/PET Pondicherry dated 9.5.2006 and consequential Notice No.629/DCR[N] LA/U/2005 Pondicherry, dated 26.5.2006 issued by the 2nd respondent and quash the same.

WP.No.36954/2006:

A.Muthukrishnan ..Petitioner.

-Vs-

1. The Additional Secretary[Revenue]
Revenue and Disastrous Management Department,
Pondicherry.

2. Sub District Collector,
[Revenue] cum Land Acquisition Officer,
Revenue Department,
Pondicherry. ..Respondents.

Petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records leading to the impugned notification of the first respondent in Government Order Misc. No.74, dated 15.9.2006 in respect of the petitioner's land in S.No.A/15/32/2, situated in Solai nagar, Pondicherry and quash the same.

WP.No.37189/2006:

M/s.Akar Associates,
a Registered Partnership Firm,
rep. By its Partner,
Mr.Kanu U.Mistry,
having their office at
NO.1, Rue-Baslieu,
Pondicherry - 605 001. ..Petitioner.

-Vs-

1. Government of Pondicherry,
Rep. By its Secretary,
Revenue Department, Pondicherry.

2. The Deputy Collector[Revenue]
North cum Land Acquisition officer,
Pondicherry. ..Respondents.

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Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records from the Respondents in so far as it relates to Section 4[1] Notifications issued in G.O.Ms.No.18, dated 20.2.2006 and declaration under Section 6 of the Act by G.O.Ms.No.22, dated 28.2.2006 in so far it relates to petitioners land in T.S.No.B/17/91/2 in Saint Fracois Street, Kurusukuppam, Pondicherry, Revenue Village, Pondicherry and quash the same.

WP.No.42934/2006:

1. Krishnasamy @ Ramanujam
2. Krishnasamy @ Krishnan
3. Padmanabhan S/o. Arumugam ..Petitioner.

-Vs-

1. The Additional Secretary[Revenue]
cum Disaster Management,
Government of Pundicherry,
Saram, Pondicherry 13.

2. The Land Acquisition Officer,
Deputy Collector - Revenue,
Saram, Pondicherry 13.

3. The Chief Secretary to Government,
Government Chief Secretariat,
Goubert Avenue,
Union Territory of Pondicherry,
Pondicherry 605 001. ..Respondents.

Petition filed under Article 226 of the Constitution of India, for a Writ of Certiorari, calling for the records on the file of the 1st Respondent in G.O.Ms.No.88, dated 5.10.1006 in so far as the lands of the petitioners are concerned in S.O.No.2 to 10 mentioned in the Notification and quash the proceedings therein as illegal, incompetent and without Jurisdiction.

WP.No.48687/2006:

1. A.Purushothaman
2. A.Muthukrishnan ..Petitioners.

-Vs-

1. Union of India, rep.
By the Additional Secretary[Revenue]
Government of Pondicherry, Pondicherry.

2. The Deputy Collector [Revenue]
North cum Land Acquisition Officer,
Revenue Department,
Puducherry. ..Respondents.

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Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records relating to declaration issued under Section 4 in G.O.Ms.No.14, [Revenue and Disaster Management] dated 20.2.2006, and published in Gazette of Pondicherry in No.9, dated 28.2.2006, and the Declaration issued under Section 6 of Land Acquisition Act in G.O.Ms.No.32, dated 22.5.2006 and published in Gazette of Pondicherry in No.23, dated 6.6.2006 and quash the same.

For Petitioners : Mr. K. Sukumaran in WP 6889 of 2006

Mr. A.L. Somayaji, Senior Advocate
for Mr. D. Krishnakumar
for WP Nos. 27402 & 48687/2006
Mr. P. Sathish in WP No. 36954

Mr. S.A. Hafiz in WP No. 37189

Mr. V. Raghavachari in WP No. 42934

For Respondents : Mr. T. Murugesan
Government Pleader (Pondicherry)

COMMON ORDER

The issue involved in all these writ petitions are one and the same, hence, they are disposed of by this common order.

2. The case of the petitioners in all these writ petitions are as follows:-

The lands of the petitioners herein were sought to be acquired by the respondents by invoking the urgent provisions of Land Acquisition Act (Act I of 1894) hereinafter referred to as the Act for the purpose of providing house sites to Tsunami affected victims dispensing with the enquiry under Section 5-A of the Act thereby the petitioners were deprived of their valuable right to make objections against the acquisition of their lands and there is no real urgency as on the date of the issuance of notification. There are vast vacant poromboke lands available, but without acquiring it, they sought to acquire the lands of the petitioners. In some of the petitioners lands, fruit bearing trees, coconut grove, palmirah trees etc., were raised and that their lands are situate within the prohibited distance of costal area where houses cannot be built.

3. Mr. A.L. Somayaji, learned Senior counsel appearing for the petitioners in WP No. 27402 & 48687 of 2006 argued that the petitioners are the owners of the land to an extent of 0.23.10 hectares comprised in T.S. No.A/15/25 of Pondicherry Village, which is the only source of their livelihood; that during September 2005, the respondents visited the property of the petitioners for an inspection and the petitioners also objected to the same by submitting representations, but no reply was received; that the petitioners also appeared for the enquiry and submitted their objections on 19.05.2006; that on 26.05.2006, again, the petitioners were asked to appear for an enquiry under Section 9 (2) of the Act and

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accordingly, the petitioners also appeared and submitted their objections, but the same was not considered; that during the course of hearing, the petitioners came to know that the respondents have issued the notification under Section 4 and the declaration under Section 6 in G.O. Ms. No.32 dated 22.05.2006 dispensing with the enquiry under Section 5A of the Act on the ground that there is an urgency in acquiring the lands for rehabilitation of victims of Tsunami at an early date; that Tsunami caused massive destruction on 26.12.2004, whereas, the respondents have issued the notification under Section 4 (1) of the Act in G.O. Ms. No.14 only on 20.02.2006; that mere existence of urgency or unforseen urgency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry, which is absent in this case; that the adjacent lands comprised in Survey Nos. 15/4, 15/5, 15/26 were deleted but chosen to acquire only the lands of the petitioners; that 80% compensation is required to be paid or deposited as contemplated under Section 17 (3) (A) of the Act, which was not done in this case and prayed for allowing of the writ petitions. In support of this contention, learned Senior counsel for the petitioners relied on the decision reported in i) (Union of India and others v. Krishan Lal Arneja and others) AIR 2004 SC 3582 wherein in Para No.17, it was held thus:-

> "17. Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property can wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exerci sed, the very purpose for which the land is being acquired urgently would be frustrated or defeated. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to

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earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration."

The above decision was relied on by the learned Senior counsel for the petitioner to say that gross delay or lapse on the part of the acquiring authority or in the absence of any material to show subjective satisfaction is no ground to invoke the urgency clause.

4. Mr. Hafiz, learned counsel appearing for the petitioner in WP No. 37189 of 2006 submitted that the petitioner's land in T.S. No.B/17/91/2 is a developed one; that the layout was approved on 29.08.2000 and the property is provided with electricity, water and drainage connection, besides that mutation was effected and patta was also issued; that the respondents not mentioned the name of the petitioner in the acquisition proceedings but passed the award in the name of the erstwhile land owner; that the dispensation of enquiry under Section 5-A of the Act without valid reasons would render the acquisition proceedings invalid and prayed for allowing of the writ petition.

5. Mr. Sathish, learned counsel appearing for the petitioner in WP No. 36954 of 2006 submitted that the petitioner's property is a residential house in S.No.A/15/32/2; that the adjacent property are open land and playground, which are not acquired by the respondents. The learned counsel for the petitioner also adopted the argument of the other counsel in respect of the alleged non-compliance of mandatory provisions of the Act by the respondents.

6. Mr. Raghavachari, learned counsel appearing for the petitioner in WP No. 42934 of 2006 submitted that the petitioner is the owner of the property in Survey Nos. 122/5 and 122/9 and 122/10 of Puranakuppam Village; that the said lands are fertile lands wherein the petitioners have raised more than 10000 fruit yielding coconut trees, teak wood and other fruit bearing trees; that the lands of the petitioners are sought to be acquired by invoking the provisions of Section 17 of the Act thereby the respondents have attempted to by-pass the normal course of hearing; that though Tsunami stated to have hit the villages on 26.12.2004, the respondents have invoked the urgency clause for providing house sites only on 05.10.2006, thus, the action of the respondents in seeking to acquire the lands by invoking the urgency clause is motivated and malafide; that the alleged beneficiaries to whom the house sites are to be provided are already owning property worth Rs.10 to 20 lakhs and they do not require the beneficial arm of the State at all; that the property adjoining lands to an extent of 20 hectares in Sl.No.12 to 34 are located at a higher

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level and there are no standing trees and the land owners are also willing to part with their lands, but those land are not sought to be acquired by the respondents; that these facts were brought to the notice of the respondents by letter dated 09.10.2006, but the same is not disposed of till date; that invoking the urgency clause is totally uncalled for and unwarranted and prayed for allowing of the writ petition.

7. Mr. Sukumaran, learned counsel appearing for the petitioner in WP No. 6889 of 2006 contended that the petitioner's land in S.No.A/24/69/2 and that the invocation of urgency clause under Section 17 of the Act is against Law; that there is a delay of 14 months in invoking the provisions of urgency clause for dispensing with the enquiry under Section 5-A of the Act; that the respondents, having waited for 14 months, it cannot be said that there existed an urgency in this case; that the notification under Section 4 (1) of the Act was issued just prior to the elections to secure vote banks; that the notifications under Section 4 (1) and 6 were not issued in accordance with the Act; the modes of publication prescribed under the Act have not been complied with; that the proposed lands are situated within 200 meters from High Tide Line that too in the 'No development zone" as per the Coastal Regulation Zone notification where no construction activity is permitted; that no prior environmental clearance certificate has been obtained; that respondents have taken policy decision not to acquire grove for providing residence which is deliberately violated in this case.

8. On behalf of the petitioners, the below mentioned decisions were relied on.

i) (Union of India v. Mukesh Hans) AIR 2004 SC 4307, wherein the Honourable Supreme Court in Para No.32, held thus:-

> " 32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows that mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation of the Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry which indicates that the legislature intended the appropriate Government to apply its mind before dispensing with Section 5-A inquiry. It also indicates that mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by itself be sufficient for dispensing with Section 5-A inquiry. If that was not the intention of the legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically Section 5-A inquiry will be dispensed with. But then that is not the language of the section which in our opinion

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requires the appropriate Government to further consider the need for dispensing with Section 5-A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with Section 5-A inquiry does not mean that in each and every case when there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under Section 17(2) exists that by itself would not contain the need for dispensing with Section 5-A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act."

The above decision was relied on to say that the need for application of mind by appropriate government is inherent in urgency contemplated under Section 17 (1) as well as unforseen emergency under Section 17 (2). If the authority is not appraised of all necessary and relevant facts before he took a decision, the order, dispensing with the enquiry under Section 5-A suffers from non-application of mind.

ii) (Union of India v. Deepak Bhardwaj) (2004) 13 SCC 85 wherein the Honourable Supreme Court, in Para No.5 and 6, it was held thus:-

5. Further, the High Court held that this case cannot be said to be a matter of grave urgency and there is total absence of material for a decision to dispense with Section 5-A. If the Government cannot ensure that inquiry be expeditiously held by the Collector under Section 5-A, it has to blame itself and it cannot thrust the adverse consequences in this behalf on the landowners by depriving them of their rights guaranteed under Section 5-A. Further, setting up of a growth point is a part of process of development of rural areas by creating necessary infrastructure. Such works keep going on as the society grows and these are long-term measures. In fact, that is why the span has been kept as twelve years in the instant case.

6. The reasons recorded by the High Court for quashing the notification issued under Sections 17(1) and (4) cannot be faulted with. This does not require further discussion in view of the correspondence produced on record. This aspect has been properly dealt with by the High Court and it has become final.

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In this case, the Honourable Supreme Court held that there is total absence of material for a decision to dispense with the enquiry under Section 5-A of the Act, hence, the reasons recorded by the High Court for quashing the notification cannot be faulted with.

9. Mr. Murugesan, learned senior counsel and Government Pleader appearing for the respondents in all these writ petitions has advanced common argument reiterating the contents of the separate and common counter and submitted that acquisition proceedings is sought to be initiated for the purpose of rehabilitating the Tsunami affected persons after making preliminary inspection by the Lieutenant Governor, Chief Minister and Land Acquisition Officers along with the Surveyors and the lands are found fit for construction of house sites to the said affected persons; that the approval for invoking the emergency provision was given by the Lt. Governor and immediately, the notification under Section 4 (1) of the Act was published in leading newspapers by dispensing with the enquiry under Section 5-A of the Act and thereafter the declaration under Section 6 of the Act was issued; that in some of the petitioners land, coconut trees are there but numbers are inflated; that in the lands of the petitioner in WP No. 42934 of 2006, about 629 trees are available; in the lands of the petitioner in WP No. 6889 of 2006, 66 coconut trees are available which is evident from the report submitted by the Deputy Collector; that the Government has taken a policy decision to cut only a small number of the trees, that too if hindrance to the construction and a major number of trees will not be disturbed besides that they have decided to plant five trees for every single tree which is being cut and so far one lakh saplings were planted; that there is no motive or malafide action in initiating the acquisition proceedings; that the Tsunami hit the costal areas on 26.12.2004 and the rescue and relief operations itself took about three months for the administration and in the meanwhile, the Government thought it necessary to rehabilitate the surviving victims permanently, therefore, a high level committee was constituted by the Chief Minister for formulation of a permanent rehabilitation measure and consequently G.O. Ms. No.29 dated 15.03.2005 was issued for regulating the construction of permanent houses; that the process of initiating acquisition proceedings required multiple meetings to be held under the Chairmanship of Lt.Governor/Chief Minister with different groups of people and participation of representatives of public and village panchayat etc., that the technical committee consisting of Chief Town Planner, Director of Fisheries, Fisherman Welfare, Deputy Collector and Joint Project Director was constituted as per G.O. Ms.NO.101 dated 17.08.2005 for identification of lands and in the meantime, general election for Puducherry Legislative Assembly was announced by the Election Commission of India and model code of conduct was in force from 01.03.2006 to 20.05.2006, hence, the entire acquisition process was kept in abeyance and on conclusion of the general elections on 21.05.2006, the acquisition proceedings have been continued again, therefore, the question of delay in invoking the urgency provision does not arise; that the urgency cannot be considered taking into account of the event but only the requirement; that the Lt. Governor along with the Chief Minister and others have personally visited the petition mentioned lands; that out of 8 villages, the lands identified for acquisition were in Solai Nagar, Vaithikuppam and Kurusukuppam, hence, invoking urgent provisions, notification under Section 4 (1) and

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declaration under Section 6 of the Act were made as mentioned below:-

	Notification U/sec. 4(1) Date of Approval	Declaration U/sec. 6
P-5 Solai Nagar (N)	GO MS No.14 dt.20.02.2006	GO Ms No.32 dt. 22.05.2006
Nagar (Additional land)	GO Ms.74 dt. 15.09.2006	To be issued
P-5B Solai Nagar (S)	GO Ms.15 dt. 20.02.2006	GO Ms. 23 dt. 28.02.2006
P6 Vaithikuppam – I	GO Ms.16 dt. 20.02.2006	GO Ms No.24 dt. 28.02.2006
Vaithikuppam – II	GO Ms.17 dt. 20.02.2006	GO Ms.25 dt. 28.02.2006
P-7 Kurusukuppam	GO Ms.18 dt. 20.02.2006	GO Ms.22 dt. 28.02.2006

The above said details show that the time taken for processing the land acquisition was very short as in five cases it was only 8 days between 4 (1) notification and 6 declaration, in the case of Solai Nagar only, it took 3 months, which is also very lesser considering the statutory limit of one year; that even the said period of three months was necessiated because of the discussion with the villagers, who requested to drop the acquisition in respect of temple land; thus, there is no delay at all in invoking the urgency provision, hence, the averment that the urgency clause was invoked after lapse of 14 months is absolutely without any merit; that the petition mentioned properties are within CRZ II zone where re-construction is permissible in as much as that area lies within the habitation site and on the land-ward side of the existing roads; that already notification mentioning the area and survey numbers were issued by Government of Pondicherry in G.O. Ms. No.18/93 Hg dated 31.12.1993 classifying CRZ-II where construction activities are permitted; that in so far as the petitioner in WP No. 27402 of 2006 is concerned, possession was taken already, the lands of the petitioner in WP No. 36954 is not taken, the possession of the lands of the petitioner in WP No. 37189 of 2006 was taken; that the possession of the lands of the petitioner in WP No. 42934 of 2006 is not taken, thus, in entire lot 1/10 lands are concerned the six writ petitions have been filed, the remaining 9/10 lands are concerned, there is no objection from the land owners in which 2/3 extent constructions were made; that in respect of the lands covered in these writ petitions, the Government of Maharashtra have offered to construct 2000 house sites at free of costs; that because of the interim order passed by this Court, all the development activities were paralysed and prayed for dismissal of the writ petitions. In support of this contention, the learned Government Pleader relied on the below mentioned decisions:-

i) (Mohan Singh and others vs. International Airport Authority of India and others) (1997) 9 SCC 132 wherein in Para No.12, the Honourable Supreme Court held thus:-

" 12. It is seen that Section 4(1) and Section 6 (1) have expressly mentioned the phrase 'hereinafter', while similar language does not find place in Section

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17(4). Equally Section 17(4) does not mention the last of the dates of the publication, i.e., the three steps required under Section 4(1) or Section 6(2). In other words, the object of Section 17 appears to be that when the Government exercises the urgency power under Section 17(1) or emergency power under Section 17(2), they form the opinion that the land is needed for public purpose. If the possession of the land is needed urgently or immediately they are required to have the notification under Section 4(1) published in the Official Gazette and within a gap of one day to make the declaration under Section 6 and have the same published under Section 6(1). Thus, what is mandatory is publication of the notification under Section 4(1) in the Gazette. Thereafter within a gap of a day publication of the declaration under Section 6(1) is mandatory. Thereby, the public purpose becomes conclusive, as envisaged under sub-section (3) of Section 6 and the Collector is empowered to take immediate possession of the land for the said public purpose.

13. The question is: Whether it is mandatory in such a situation, i.e., after the publication of the notification in the Gazette publication in two local newspapers and giving of notice of the substance of the notification at convenient places in the locality, to await the exercise of power under Section 17(4)? After giving due and deep consideration to the respective contentions raised by the learned counsel, we are of the considered view that though the compliance of these three steps required under Section 4(1) is mandatory, for the exercise of the power under Section 17(4) it is not necessary that all the three steps should be completed before making the declaration under Section 6 (1) and have it published for directing the Collector to take possession under Section 17(1) or 17(2). What is needed is that there should be a gap of time of at least a day between the publication of the notification under Section 4(1) and of the declaration under Section 6(1). Herein, we dispose of the controversy and agree with Shri Shanti Bhushan that the date of the notification and declaration published as mentioned in the Gazette is conclusive but not the actual date of printing in the Gazette. This interpretation of ours would serve the public purpose, namely, the official functions are duly discharged. When the land is urgently needed under Section 17(1), notice under Section 9(1) would be given to the owner and steps would be taken to and resume its possession after the expiry of 15 days. If it is needed urgently under Section 17(2), even without waiting for 15 days on issue of notice under Section 9(1) to the owner, the

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appropriate Government would direct the Collector to take possession of the land immediately. If the publication in the newspapers and in the locality is also insisted upon as preliminary to the exercise of power under Section 17(4) which are mandatory requirements and until last of them occurs, the immediate or urgent necessity to take possession of the land under Section 17(1) or 17(2) before making the award would be easily defeated by dereliction of duty by the subordinate officers or by skillful maneuver. The appropriate Government is required to take the decision for acquisition of the land and to consider the urgency or emergency and to make the notification under Section 4(1) and declaration under Section 6 and have them published in the Gazette that the land acquired under Section 4(1) is needed for public purpose; they become conclusive under Section 6; and to give direction to the Collector to take its possession. The publication in the newspapers and giving of notice of the substance of the notification at the convenient places in the locality are required to be done by the Collector authorised by the Government under Section 7 and his subordinate staff. If dereliction of duty is given primacy, delay deflects public justice to meet urgent situation by the acts of subordinate officers for any reason whatsoever. Until that is done and the last of the dates occurs, Government would be unable to act swiftly for the public purpose to take immediate possession envisaged under sub-section (1) or (2) of Section 17 and they would be easily defeated or frustrated. "

In the above decision the Honourable Supreme Court held that when urgency provision is invoked, publication of Section 4 (1) notification in the newspapers and in the locality cannot be insisted upon as preliminary to exercise power under Section 17 (4). Declaration under Section 6 must be published after publication of notification under Section 4 (1) though signed earlier. If possession of the land is immediately required, the authorities have to publish the notification under Section 4 (1) of the Act in the official gazzette and after a gap of one day make declaration under Section 6 and have the same published under Section 6 (1). Though the compliance of three steps under Section 4 (1) is mandatory, for the exercise of power under Section 17 (4) it is not necessary that all the three steps should be completed before making the declaration under Section 6 (1).

ii) (Meerut Development Authority, Meerut vs. Smt. Pista Devi and others) AIR 1986 SC 2025 wherein in Para-5 and 6, it was held by the Honourable Supreme Court thus:-

"In the circumstances of the case it cannot be said that the decision of the State Government in resorting to Section 17(1) of the Act was unwarranted. The provision of housing accommodation in these days

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has become a matter of national urgency. We may take judicial notice of this fact. Now it is difficult to hold that in the case of proceedings relating to acquisition of land for providing house sites it is unnecessary to invoke Section 17(1) of the Act and to dispense with the compliance with Section 5-A of the Act. Perhaps, at the time to which the decision in Narayan Govind Gavate v. State of Maharashtra related the situation might have been that the schemes relating to development of residential areas in the urban centres were not so urgent and it was not necessary to eliminate the inquiry under Section 5-A of the Act. The acquisition proceedings which had been challenged in that case related to the year 1963. During this period of nearly 23 years since then the population of India has gone up by hundreds of millions and it is no longer possible for the Court to take the view that the schemes of development of residential areas do not "appear to demand such emergent action as to eliminate summary inquiries under Section 5-A of the Act". In Kasireddy Papaiah (died) v. Government of A.P. Chinnappa Reddy, J. speaking for the High Court of Andhra Pradesh dealing with the problem of providing housing accommodation to Harijans has observed thus:

> "That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties , unless , of course , it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides , merely because of the delay on the part of some government officials."

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6. What was said by the learned Judge in the context of provision of housing accommodation to

Harijans is equally true about the problem of providing housing accommodation to all persons in the country today having regard to the enormous growth of population in the country. The observation made in the above decision of the High Court of Andhra Pradesh is quoted with approval by this Court in Deepak Pahwa v. Lt. Governor of Delhi even though in the above decision the Court found that it was not necessary to say anything about the post-notification delay. We are of the view that in the facts and circumstances of this case the post-notification delay of nearly one year is not by itself sufficient to hold that the decision taken by the State Government under Section 17(1) and (4) of the Act at the time of the issue of the notification under Section 4(1) of the Act was either improper or illegal. "

In the above decision, it was held by the Honourable Supreme Court that the decision of the State Government in resorting to Section 17(1) and dispensing with compliance of Section 5-A was warranted as the judicial notice of the fact that provision of housing accommodation in these days has become a matter of national urgency can be taken. Similarly, post notification and pre-notification delay of nearly one year would not by itself be sufficient to render the decision taken by the state Government under Section 17 (1) and sub-section (4) at the time of issuance of notification under Section 4 (1) improper or illegal.

iii) (Chameli Singh and others vs. State of U.P. and another) AIR 1996 SC 1051 wherein in Para-15

" 15. The question, therefore, is whether invocation of urgency clause under Section 17(4) dispensing with inquiry under Section 5-A is arbitrary or is unwarranted for providing housing construction for the poor. In Aflatoon v. Lt. Governor of Delhi (SCC at p. 290), a Constitution Bench of this Court had upheld the exercise of the power by the State under Section 17(4) dispensing with the inquiry under Section 5-A for the planned development of Delhi. In Pista Devi case this Court while considering the legality of the exercise of the power under Section 17(4) exercised by the State Government dispensing with the inquiry under Section 5-A for acquiring housing accommodation for planned development of Meerut, had held that providing housing accommodation is national urgency of which court should take judicial notice. The pre-notification and post-notification delay caused by the officer concerned does not create a cause to hold that there is no urgency. Housing conditions of Dalits all over the country continue to be miserable even till date and is a fact of which courts are bound to take judicial notice. The ratio of Deepak Pahwa case was followed. In that case a three-Judge Bench of this Court had upheld the notification issued under Section 17(4), even

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though lapse of time of 8 years had occurred due to inter-departmental discussions before receiving the notification. That itself was considered to be a ground to invoke urgency clause. It was further held that delay on the part of the lethargic officials to take further action in the matter of acquisition was not sufficient to nullify the urgency which existed at the time of the issuance of the notification and to hold that there was never any urgency. In Jage Ram v. State of Haryana this Court upheld the exercise of the power of urgency under Section 17(4) and had held that the lethargy on the part of the officers at an early stage was not relevant to decide whether on the day of the notification there was urgency or not. Conclusion of the Government that there was urgency, though not conclusive, is entitled to create weight. In Deepak Pahwa case this Court had held that very often persons interested in the land proposed to be acquired may make representations to the authorities concerned against the proposed writ petition that is bound to result in multiplicity of enquiries, communications and discussions leading invariably to delay in the execution of even urgent projects. Very often delay makes the problem more and more acute and increases urgency of the necessity for acquisition. In Rajasthan Housing Board v. Shri Kishan (SCC at p. 91), this Court had held that it must be remembered that the satisfaction under Section 17(4) is a subjective one and that so long as there is material upon which Government could have formed the said satisfaction fairly, the Court would not interfere nor would it examine the material as an appellate authority. In State of U.P. v. Keshav Prasad Singh (SCC at p.590), this Court had held that the Government was entitled to exercise the power under Section 17(4) invoking urgency clause and to dispense with inquiry under Section 5-A when the urgency was noticed on the facts available on record. In Narayan Govind Gavate case a three-Judge Bench of this Court had held that Section 17(4) cannot be read in isolation from Section 4(1) and Section 5-A of the Act. Although 30 days from the notification under Section 4(1) are given for filing objections under Section 5-A, inquiry thereunder unduly gets prolonged. It is difficult to see why the summary inquiry could not be completed quite expeditiously. Nonetheless, this Court held the existence of prima facie public purpose such as the one present in those cases before the Court could not be successfully challenged at all by the objectors. It further held that it was open to the authority to take summary inquiry under Section 5-A and to complete inquiry very expeditiously. It was emphasised that: (SCC p. 148, para 38)

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"... The mind of the officer or authority concerned

has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A which has to be considered."

16. It would thus be seen that this Court emphasised the holding of an inquiry on the facts peculiar to that case. Very often the officials, due to apathy in implementation of the policy and programmes of the Government, themselves adopt dilatory tactics to create cause for the owner of the land to challenge the validity or legality of the exercise of the power to defeat the urgency existing on the date of taking decision under Section 17(4) to dispense with Section 5-A inquiry.

17. It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry under Section 5-A. As held by this Court, the delay by itself accelerates the urgency: Larger the delay, greater be the urgency. So long as the unhygienic conditions and deplorable housing needs of Dalits, Tribes and the poor are not solved or fulfilled, the urgency continues to subsist. When the Government on the basis of the material, constitutional and international obligation, formed its opinion of urgency, the court, not being an appellate forum, would not disturb the finding unless the court conclusively finds the exercise of the power mala fide. Providing house sites to the Dalits, Tribes and the poor itself is a national problem and a constitutional obligation. So long as the problem is not solved and the need is not fulfilled, the urgency continues to subsist. The State is expending money to relieve the deplorable housing condition in which they live by providing decent housing accommodation with better sanitary conditions. The lethargy on the part of the officers for pre and post-notification delay would not render the exercise of the power to invoke urgency clause invalid on that account.

18. In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the

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procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation, interest is payable under Section 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23(1-A) and from the date of possession till compensation is deposited. It would thus be clear that the plea of deprivation of right to livelihood under Article 21 is unsustainable.

The Honourable Supreme Court in the above decision held that pre-notification and post notification delay caused due to the lethargy on the part of officers of the Government would not render exercise of power of invoking urgency clause invalid.

iv) (State of U.P. v. Keshav Prasad Singh) AIR 1995 SC 2480 wherein in Para-5 and 6 it was held thus:-

"5. The next question is whether the Government would be justified in exercising its power under Section 17(4) and dispense with the inquiry under Section 5-A of the Act. Mandatory injunction issued by the civil court to demolish the compound wall and to restitute possession to the respondent had to be complied with. There is thus urgency. The public purpose was obvious as the compound was required to be retained to protect the safety of the office. The object of Section 5-A enquiry was to show whether there was no public purpose or the land was not suitable or some other lands may be acquired. All these relevant and related facts are redundant due to the facts of the case.

6. So, on the facts and in the circumstances, the Government was justified in exercising their power under Section 17(4) invoking urgency clause and dispense with the inquiry under Section 5-A. By no stretch of imagination it could be said that there was no public purpose, for which inquiry under Section 5-A could be made and decision taken. In that view of the matter, the High Court was clearly in error in allowing the writ petition and committed a manifest error of law in quashing the notification under Section 4(1) and declaration under Section 6 of the Act."

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This decision was relied on by the learned Senior counsel for the

respondents to say that the object of Section 5-A enquiry was to show whether there was no public purpose or the land was not suitable or some other lands may be acquired. All these relevant and related facts are redundant when public purpose was obvious.

10. This Court carefully considered the argument of counsel on both sides and perused the material records placed. In all these writ petitions, almost the below mentioned grounds are canvassed namely pre and post-notification delay vitiated the acquisition proceedings, there is no need for dispense with the enquiry under Section 5-A of the Act, there is no material placed for decision to dispense with the enquiry under Section 5-A of the Act, the respondents, having waited for 14 months from the date of Tsunami could have waited for another 30 days and complete the enquiry under Section 5-A of the Act, in some of the petitioner's land coconut trees, fruit bearing trees were available, which was not taken into account by the respondents and that some of the lands of the petitioners are situate within a distance of 500 meters from high tide line where construction activities are prohibited.

11. The respondents have replied that immediately after Tsunami hit the area, Lt. Governor of Union Territory of Pondicherry, Chief Minister, Land Acquisition Officer along with the Surveyors have made field inspection of the lands and conducted multiple meetings with all groups of people, representatives, technical committee was constituted which identified the lands; that the respondents issued G.O. Ms. No.29 dated 15.03.2005 thereby a policy decision for re-construction of permanent house sites, infrastructure facilities for the tsunami affected people were taken; that in the said Government Order it is stated that the matter has been discussed at length at various level on 23.02.2005 and Relief and Rehabilitation Committee was constituted under the Chairmanship of Lt. Governor, Pondicherry and thereafter, a policy decision was arrived at thereby it was decided to avail the offer of NGOs, Charitable Trusts, Public and Private Sector Undertakings, Corporate bodies to construct houses which are to be disaster resistant based on the type, design and layout supplied by the Government, continuous quality checked by teams, allotment of house site to the beneficiaries on rational basis retaining the right of the land with the Government, giving inalienable right to the Tsunami affected families. There would not be any religious activities or promotion of any ideology allowed during the construction of the houses. An empowered committee was also constituted to consider the original proposal and modification etc., On 17.08.2005, G.O. Ms. No.101 was issued thereby a technical committee was constituted consisting of Chief Town Planner, Deputy Collector Revenue (South), Director of Science and Technology and Environment and Superintending Engineer to study the field condition. The committee was conferred with the power to study the field condition of the lands for the construction of houses with reference to the norms of Coastal Regulation Zones, examine the acquisition of the existing housing area by payment of appropriate compensation through negotiation and reconstruction of houses with the reduced land area but with the same plinth area of the old house in not more than 300 sq.ft., that the Survey shall include regularisation of legal and illegal construction of houses in private lands etc., The committee had met several groups of habitants and submitted its report during December 2005 to the Lt. Governor and Chief Minister. Thereafter, notification under

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Section 4 (1) of the Act was issued on 20.02.2006 and declaration under Section 6 was made on 28.02.2006. In the meantime, election for Puducherry Legislative Assembly was notified by the Election Commission of India and model code of conduct came into force from 01.03.2006 to 20.05.2006. After the conclusion of general election, in some cases, notification under Section 4 (1) was issued on 22.05.2006. Subsequently, local body elections were ordered to be conducted by the Division Bench of this Court and the same model code was re-introduced. The said details satisfactorily explain the pre-notification delay.

12. In the argument of the learned Senior counsel for the respondents, the details relating to notification under Section 4 (1) and the declaration under Section 6 of the Act were demonstrated. It is stated that except Solai Nagar (additional lands) in other places declaration under Section 6 was made within 8 days in respect of the land of some of the petitioners. So far as Solai Nagar is concerned, it has been explained that because of the interim stay granted by this Court, no declaration under Section 6 was made. Even otherwise, the pre-notification and post notification delay does not create a cause to hold that there is no urgency. Followed (Chameli Singh and others vs. State of U.P. and another) AIR 1996 SC 1051.

13. The other argument of the counsel for the petitioners is that the respondents, having delayed for 14 months ought to have granted opportunity of hearing to the land owners as contemplated under Section 5-A of the Act. No doubt, Section 5-A is the only provisions which provides opportunity to the land owners to file their objections within 30 days of publication of notification under Section 4 (1) of the Act and such objection has to be determined after giving the objectors an opportunity of hearing, either in person or any one authorised by him or through a pleader. Whether urgency existed or not is a matter solely for the determination of the Government and ordinarily, it is not open for judicial review, however, the opinion will have to be formed after application of mind to the problem and not mechanically. The opinion must be based on relevant facts. The opinion should not have been formed arbitrarily or capriciously or with a malafide or oblique motive. Followed (Mathur Village Residents Welfare Association vs. State of Tamil Nadu) 1992 1 Law Weekly (Volume 109) 383.

14. In the instant case. Urgency powers under Section 17 (4) dispensing with the enquiry under Section 5-A has been invoked. In the notification under Section 4 (1) of the Act issued by the respondents, it is mentioned as follows:-

> "Consequent to the Tsunami devastation, the Government of Pondicherry embarked upon a massive rehabilitation programme for the Tsunami victims in the Pondicherry and Karaikal Districts. Providing houses to the people who were rendered homeless and are residing within the dangerous limits from the High Tide Line was the foremost task of the government.....
>
> Whereas it appears to the Government of Pondicherry that the lands specified in the schedule below are needed for a public purpose viz., for rehabilitation and re-settlement of families affected

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by Tsunami in Solai Nagar (North) Hamlet in Pondicherry Revenue Village by invoking urgency provision, notice to the effect is given to all whom it may concerned in accordance with the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) and the Lieutenant-Governor, Pondicherry hereby authorises the Deputy Collector (Revenue)-Land Acquisition Officer (North), Pondicherry, his staff and workmen who exercise the powers conferred by sub-section 2 of Section 4 of the said Act.

In Sub-section 4 of Section 17 of the Land Acquisition Act, 1894, the Lieutenant-Governor Pondicherry directs that in view of the urgency of the case, the provisions of Section 5-A of the Act shall not apply to this case."

15. From the above, it is clear that it is not a case of the Government not forming an opinion at all with regard to the urgency. It is also not a case of the Government not applying its mind to the problem. It is also not the case of the opinion getting formed on no facts at all or forming opinion on facts not relevant or the opinion getting formed motivated by malafides or oblique motives, thus, the issue is answered negatively against the petitioners.

16. The Honourable Supreme Court in the decision reported in (Meerut Development Authority, Meerut vs. Smt. Pista Devi and others) AIR 1986 SC 2025 held in a case relating to construction of houses to Adi-dravidars that the provisions of housing accommodation in general in these days has become a matter of national urgency, the Courts can also take judicial notice of the said fact, hence, it is difficult to hold that in the case of proceedings relating to acquisition of lands for providing house site, it is not necessary to invoke Section 17 (1) of the Act and dispense with the compliance of Section 5 of the Act.

17. It is to be remembered that Section 6 declaration was made in respect of the land belonging to four writ petitioners within a period of eight days and one writ petition in three months and in another writ petition, no declaration was made since this Court granted interim order, hence, this Court is of the view that there is no undue or unexplained delay with reference to processing of the matter. In this context, it would be useful to refer to the decision of the Honourable Supreme Court in the decision rendered in Deepak Pahwa etc. Vs. Lt.Governor of Delhi and others (AIR-1984-SC-1721), wherein in Para-8 it was held as under:-

"8. The other ground of attack is that if regard is had to the considerable length of time spent on interdepartmental discussion before the notification under Section 4(1) was published, it would be apparent that there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the enquiry under Section 5A. We are afraid, we cannot agree with this contention. Very often persons interested in the land proposed to be acquired make various representations to the concerned authorities

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against the proposal acquisition. This is bound to result in a multiplicity of enquiries, communications and discussions leading to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition. It is, therefore, not possible to agree with the submission that mere pre notification delay would render the invocation of the urgency provisions void."

In the above said judgment, a contention was raised that considerable time was spent on interdepartmental discussion prior to notification under Section 4(1) and there was no justification for invoking the urgency clause under Section 17(4) and dispensing with the enquiry under Section 5A, the Honourable Supreme Court held that very often persons interested in the land proposed to be acquired make various representations to the concerned authorities against the proposal acquisition, which results in multiplicity of enquiries, communications and discussions leading to delay in the execution of even urgent projects. Very often the delay makes the problem more and more acute and increases the urgency of the necessity for acquisition, it is, therefore, not possible to agree with the submission that mere pre notification delay would render the invocation of the urgency provisions void.

18. The above said decision of the Honourable Supreme Court was followed by me in WP No. 47855 of 2007 dated 24.04.2007 (S. Dhandapani and others vs. The Secretary, Government of Tamil Nadu, Municipal Administration and Water Supply Department and others) which was reported in Manu/TN/2007/1037 this Court, wherein in Para-12 and it was held thus:-

"12. Section 17(4) provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub sections (1) or (2) of Section 17, it may direct that the provisions of Section 5A shall not apply and if such direction is given then 5A enquiry can be dispensed with and declaration may be made under Section 6 on publication of 4(1) notification possession can be made. Enquiry under Section 5A is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. If the Government decided to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5A.

14. In so far as the ground of attack that considerable period has lapsed between the introduction of the scheme and the present notification and hence, there was no justification for invoking the urgency clause, dispensing with enquiry under Section 5A is

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concerned, the petitioners filed number of cases against the authorities, which resulted in a multiplicity of enquiries, communications and discussions leading to delay in the execution of this urgent project and the said delay would not render the invocation of the urgency provisions void, as has been held in Deepak Pahwa etc. Vs. Lt.Governor of Delhi and others (AIR-1984-SC-1721) cited supra."

19. An argument was advanced by Mr. Sukumaran, learned Counsel appearing for the petitioner in WP No. For Petitioner in WP 6889 of 2006 and Mr. P. Sathish, learned counsel for the petitioner in WP No. 36954 that the respondents have completely ignored the coastal regulation zone notification, which categorically prohibits putting up new construction upto 500 meters from high tide line and the lands now sought to be acquired are classified as CRZ No.I. In the counter, the respondents have categorically denied that the lands covered in these writ petitions falls within CRZ II and therefore the re-construction is permissible in as much as that area lies within the habitation site and on the land-ward side of the existing roads and certain lands of some writ petitioners comes under CRZ II zone, the other petitioners lands not at all falls within the Coastal Regulation Zone. The respondents also relied on the notification issued by the Ministry of Environment and Forest dated 19.02.1991 issued under Section 3 (1) and Section 3 (2) (v) of the Environment (Protection) Act, 1986 and Rule 5 (3) (d) of the Environment (Protection) Rules, 1986 which contains details of the coastal area classification, development and regulation and the activities which are permissible and restricted within the coastal regulation zone. In the said notification, in clause 3 (2) (3) (i) it is stated thus:-

"(3) (i) The coastal States and Union Territory Administrations shall prepare, within a period of one year from the date of this notification, Coastal Zone Management Plans identifying and classifying the CRZ areas within their respective territories in accordance with the guidelines given in Annexures I and II of the notification and obtain approval (with or without modifications) of the Central Government in the Ministry of Environment & Forests."

20. The consequential notification of the Government of Pondicherry was issued in G.O. No.18 of 1993, Housing dated 31.12.1993, in which in Annexure I, the norms for Regulation of Activities is mentioned in Clause 6 (2) which is extracted below:-

"CRZ-II - (1) Buildings shall be permitted neither on the seaward side of the existing road (or roads proposed in the approved Coastal Zone Management Plan of the area) nor on seaward side of existing authorised structures. Buildings permitted on the landward side of the existing and proposed roads/existing authorised structures shall be subject to the existing local Town and Country Planning Regulations including the existing norms of FSI/FAR.

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ANNEXURE
PONDICHERRY REGION

.....

C.R.Z.II

Muthialpet

R.S. Nos. 27 pt., 28 pt., 30 pt., 31 pt., 35 pt., 36, 37, 38 pt., 39 pt., 40 to 45 pt., 50 pt., 51 to 90, 91 pt., 92 pt., 101 pt., 102, 103, 104, 105 pt., 106 pt., 107, 108 pt., 144 pt., 145, 146, 147 pt., 148, 149, 152 pt., 153 pt., 178 pt., 179 pt., 183 pt., 184 pt., 186 pt., 188 to 223."

In support of this contention, the respondents further relied on the letter of the Government of Pondicherry, Department of Science and Technology and Environment, Pondicherry addressed to the District Collector, Revenue (North). The relevant portion of the said letter is extracted below:-

"With reference to the above subject it is informed that the proposed lands to be acquired for construction of permanent houses for Tsunami victims at Solai Nagar (North) in R.S. Nos. 51/10 pt, 51/9 pt, 59/3 pt, 59/8, 59/10 pt, 59/13pt and 59/9 and at Solai Nagar (South) in R.S. Nos. 68/2 and 70/2 falls under CRZ - II as per Pondicherry Costal Zone Management Plan. Construction of houses in CRZ-II is a permissible activity as per Costal Regulation Zone (CRZ) Notification, 1991. Clearance shall be obtained from the Town and Country Planning Department before starting any construction activity in the above said land.

The lands proposed to be acquired for construction of permanent houses for Tsunami victims at Kurusukuppam in R.S. No.194/3 and at Nallavadu, Poornakuppam Village in R.S. No.122 does not fall under Coastal Regulation Zone as per Pondicherry Coastal Zone Management Plan and it is not covered by the Coastal Regulation Zone (CRZ) Notification, 1991 norms.

The copy of Coastal Regulation Zone (CRZ) notification, 1991 and gazette Notification of the Government of Puducherry vide G.O.Ms. No.18/93/Hg. Dated 31.12.1993 are enclosed for reference."

21. Considering the said records, this Court is of the view that the lands at Solai Nagar South and North comes under CRZ II and the land in Kurusukuppam and Poornankuppam do not fall in Coastal Regulation Zone as per the Pondicherry Coastal Zone Management Plan.

22. In so far as the standing trees in the petitioners lands are concerned, it is submitted by the respondents that the lands covered in WP Nos. 42934 and 6889 of 2006, 629 and 66 trees respectively are available. It is also replied by the respondents that the Government had taken a

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decision to remove few trees leaving major number of trees undisturbed, in addition to that the respondents submitted that for felling of one tree, they have proposed to plant 5 saplings and further went on to say that so far they have planted one lakh saplings in Tsunami affected area of Pondicherry. The contention of the respondents that the process of constructing house site for the fisherman has to be necessarily made near the coastal area and in such event the lands sought to be acquired are the only suitable land and that the said construction is for a noble cause and for that purpose felling of few trees were necessiated and that for felling of one tree, they have planted five saplings is justified.

23. Arguments were also advanced by the counsel for the petitioners that alternative as well as adjacent vacant lands are available, but the respondents have not chosen to acquire the same. The suitability of the lands for the public purpose can be judged only by the Government. When the Government identified certain lands as suitable, this Court cannot substitute its view, hence, the said argument is rejected as untenable.

24. The petitioner in WP No. 37189 of 2006 has averred in the affidavit that his name is not found mentioned in the notification under Section 4 (1) of the Act. The Honourable Supreme Court in the decision reported in (Ahuja Industries Ltd vs. State of Karnataka and Others) (2003) 5 SCC 365 held that the acquisition officers need not conduct roving enquiry about the ownership of the property. If the name of the purchaser is not yet entered in the record-of rights, then non-service on such person does not vitiate the acquisition proceedings, hence, the said averment is also rejected as unsustainable in law.

25. The other averment that 80% of compensation amount is not deposited by the respondents in terms of Section 17 (3) (A) of the Act is concerned, it was replied by the learned Senior counsel for the respondents that the compensation amount would be deposited in accordance with law, which is recorded.

26. In view of the above discussion, all the writ petitions are devoid of merits, liable to be dismissed and accordingly they are dismissed. No costs.

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Sub Asst. Registrar.

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To
1. The Chief Secretary
Union Territory of Pondicherry
Pondicherry

2. The Secretary
Department of Revenue and Disaster
Management
Pondicherry

3. The Additional Secretary (Revenue)
Land Acquisition Officer
Department of Revenue and Disaster
Management
Pondicherry

4. The Deputy Collector [Revenue]
North cum Land Acquisition Officer,
Revenue Department, Puducherry.

5. The Land Acquisition Officer,
Deputy Collector-Revenue,
Saram, Pondicherry-3.

6. The secretary,
Government of Pondicherry,
Revenue Department,
Pondicherry.

7. The Sub District Collector [Revenue]
cum Land Acquisition Officer,
Revenue Department, Pondicherry.

8. The Addl. Secretary[Revenue],
Govt. of Pondicherry,
Union of India, Pondicherry.

+ 1 CC To M/s.S.A.Hafiz, Advocate SR NO.45565
+ 2 CCs To M/s.K.Sukumar, Advocate SR NO.45484
+ 1 CC To M/s.D.Krishnakumar, Advocate SR NO.45586
+ 1 CC To M/s.D.Krishnakumar, Advocate SR NO.45587
+ 2 CCs to Senior Government Pleader cum Senior Public Prosecutor for Pondicherry, SR Nos.45568, 45569
+ 1 CC To Mr. V.Raghavachari Advocate SR NO. 45600

WP Nos. 6889/2006 etc., batch

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